

**Before the
Federal Communications Commission
Washington, D.C. 20554**

)	
In the Matter of)	
)	
Lifeline and Link Up Reform and)	WC Docket No. 11-42
Modernization)	
)	
)	
)	
)	

**COMMENTS OF TELRITE CORPORATION D/B/A LIFE WIRELESS IN RESPONSE
TO TRACFONE’S REQUEST FOR CLARIFICATION**

John J. Heitmann
Jameson J. Dempsey
KELLEY DRYE & WARREN LLP
3050 K Street, NW
Suite 400
Washington, D.C. 20007
(202) 342-8544 (voice)
(202) 342-8451 (facsimile)
jheitmann@kelleydrye.com

*Counsel for Telrite Corporation d/b/a Life
Wireless*

TABLE OF CONTENTS

	Page
INTRODUCTION & SUMMARY	1
I. TELRITE OFFERS CONSUMERS A VARIETY OF AFFORDABLE AND COMPETITIVE SERVICE OFFERINGS	4
II. A SMARTPHONE IS NOT REQUIRED FOR A MOBILE BIAS PLAN QUALIFYING FOR THE 12-MONTH BENEFIT PORT FREEZE	7
III. TELRITE PROVIDES ITS LIFELINE SUBSCRIBERS WITH A VARIETY OF PRODUCTS THAT MEET OR EXCEED THE LIFELINE MODERNIZATION ORDER’S MINIMUM SERVICE STANDARDS AND QUALIFY FOR THE 12-MONTH BENEFIT PORT FREEZE	12
A. Telrite’s Offerings Meet the Commission’s Lifeline Minimum Service Standards	12
1. Telrite’s Premium Wi-Fi Service Is BIAS	13
2. Telrite’s Premium Wi-Fi Service Is Mobile BIAS, Which Is Not Limited to Licensed, Cellular Data	14
3. Telrite’s Premium W-Fi Service Meets the Commission’s Minimum Service Standards	16
B. Telrite’s Broadband Offering Promotes the Lifeline Modernization Order’s Goals of Promoting Consumer Choice and Innovation	20
CONCLUSION	21

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
)	
Lifeline and Link Up Reform and)	WC Docket No. 11-42
Modernization)	
)	
)	
)	

**COMMENTS OF TELRITE CORPORATION D/B/A LIFE WIRELESS IN RESPONSE
TO TRACFONE’S REQUEST FOR CLARIFICATION**

Telrite Corporation d/b/a Life Wireless (Telrite or the Company), by and through the undersigned counsel, respectfully submits these comments in response to the Commission’s request for comment on TracFone’s request for clarification.¹

INTRODUCTION & SUMMARY

In these comments, Telrite addresses two separate issues that TracFone raised in its request for clarification.² First, Telrite agrees that, in order for the 12-month benefit port freeze to apply, subscribers receiving mobile BIAS offerings should have devices capable of handling such service. In the context of today’s Lifeline program, those devices should be capable of

¹ *See Wireline Competition Bureau Seeks Comment on TracFone Request for Clarification*, Public Notice, WC Docket No. 11-42 (rel. Feb. 16, 2017); *see also* Letter from Mitchell F. Brecher, Greenberg Traurig, LLP to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al. (filed Jan. 18, 2017) (TracFone Request); Letter from Norina T. Moy, Director, Government Affairs, Sprint, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al. (filed Jan. 19, 2017).

² While the Commission only placed TracFone’s request for clarification on Public Notice, Sprint Corporation (Sprint) also submitted a letter with distinct but related requests. *See* Letter from Norina T. Moy, Director, Government Affairs, Sprint Corporation, to Marlene H. Dortch, Secretary Federal Communications Commission, WC Docket No. 11-42 et al. (filed Jan. 19, 2017) (Sprint Request). In these comments, we address the issues that each party raised in its letters.

handling data at 3G or better speeds.³ Telrite provides all of its customers with 3G-or-better SIM cards and handsets, and enables consumers to bring their own 3G-or-better devices to use with Telrite's Lifeline service offerings.⁴

Second, Telrite provides its Lifeline subscribers with a variety of products that meet or exceed the Lifeline Modernization Order's minimum service standards, including plans that offer cellular data as well as plans that offer unlimited Premium Wi-Fi service. Telrite does not rely on free public Wi-Fi to meet these standards. Instead, Telrite's Premium Wi-Fi service offering provides secure VPN access to iPass's private network of 34 million access points,⁵ which include private home and commercial access points.⁶ Telrite's unlimited Premium Wi-Fi offering provides consumers with a compelling alternative to the cellular-data-centric plans offered by most Lifeline eligible telecommunications carriers (ETCs) today, promoting consumer choice and product differentiation in the Lifeline market.

³ Contrary to TracFone's claim, 3G is the governing speed threshold for mobile BIAS in the Lifeline program. *See* 47 C.F.R. § 54.408(b)(2). TracFone's request for clarification on this issue is really a request for a rule change. *See* Letter from Mitchell F. Brecher, Greenberg Traurig, LLP to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., Enclosure at 1 (filed Feb. 14, 2017) (TracFone WCB/TAPD Letter).

⁴ TracFone's assertion that these devices must be "smartphones" is yet another claim without basis in the current Lifeline program rules. *See* TracFone Request at 2-3. Once again, TracFone is requesting a new rule, rather than clarification of an existing one.

⁵ Telrite provides this service through the resale of iPass's network. TracFone's suggestion that mobile BIAS cannot be provided through the resale of underlying provider networks would render its business model untenable. *See* TracFone WCB/TAPD Letter, Enclosure at 1 (asserting that BIAS "provided by others" cannot count as BIAS). Once again, nothing in today's Lifeline rules supports or can be "clarified" to support TracFone's assertion.

⁶ Sprint's assertion that mobile BIAS must "provide service in locations (such as a Lifeline customer's home) that otherwise lack[] broadband access" is not only unsupported by today's Lifeline program rules, it makes no sense for a program focused on making available affordable broadband access. *See* Letter from Norina T. Moy, Director, Government Affairs, Sprint Corporation, to Marlene H. Dortch, Secretary Federal Communications Commission, WC Docket No. 11-42 et al. at 1 (filed Feb. 15, 2017) (Sprint WCB Letter).

The Lifeline Modernization Order expressly calls for innovation in service offerings and in no way limits the definition of mobile BIAS to mobile data services provided over a provider's own cellular data network.⁷ Indeed, the definition of mobile BIAS does not exclude innovative services that utilize unlicensed spectrum, and the Commission should reject calls to rewrite the rules in a manner that would limit mobile BIAS to cellular data service.⁸ As non-Lifeline customers do, Lifeline-eligible subscribers should be able to choose Wi-Fi-enabled mobile broadband service and other innovative service offerings from cable companies and others, or choose more familiar all-cellular offerings. Fortunately, today's Lifeline program rules allow them to do just that. Because these plans offer BIAS that meet the Commission's minimum service standards, they qualify for the 12-month benefit port freeze.

The Commission should decline any requests for "clarification" that would rewrite these rules so as to preclude access to the kinds of innovative and robust service offerings the Commission had hoped to spur through expansion of the port freeze to mobile BIAS offerings.

⁷ See *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, ¶¶ 49 & n.132, 373 (rel. Apr. 27, 2016) (Lifeline Modernization Order or the Order). Sprint's proposed standard would render TracFone and every other major Lifeline service provider reliant on resale unable to provide such service. See Sprint WCB Letter at 1.

⁸ Telrite is not asking the Commission to classify Wi-Fi—i.e., IEEE 802.11 wireless local area networks—as BIAS, nor is it asking for the Commission to classify fixed BIAS accessed through a single Wi-Fi access point (or a limited number of access points) as mobile BIAS or functionally mobile BIAS under the Commission's open Internet rules. Rather, the Commission need only declare that Telrite's Premium Wi-Fi service—a retail, mass-market offering that provides mobility through a network of millions of resold BIAS access points and specialized technology that automatically connects to the strongest access point without user interaction—qualifies as BIAS as defined in Section 54.400(l) of the Commission's rules and constitutes mobile BIAS under the Lifeline Modernization Order that counts toward the applicable Lifeline broadband minimum service standard. Alternatively, the Commission should declare that Telrite's entire broadband service offering, which encompasses a hybrid of licensed cellular and unlicensed Premium Wi-Fi in a Wi-Fi-First model, constitutes BIAS under the Lifeline Modernization Order and the Commission's Lifeline rules.

Indeed, this proceeding demonstrates that the 12-month benefit port freeze is working as intended, permitting access to smartphones and innovative service offerings that are affordable for low-income consumers and help to close the digital divide.

I. TELRITE OFFERS CONSUMERS A VARIETY OF AFFORDABLE AND COMPETITIVE SERVICE OFFERINGS

Telrite provides its Lifeline subscribers with a variety of products that meet or exceed the Lifeline Modernization Order’s minimum service standards, including plans that offer cellular data and unlimited Premium Wi-Fi service:

Customer	DEVICE*	COST	TALK	TEXT	DATA	MMS
Legacy feature phone subscribers	3G-capable handset with Internet browser**	FREE	500 Min	Unlimited	Unlimited Premium Wi-Fi + 500 MB Cellular	25
Legacy smartphone subscribers	Smartphone	FREE	500 Min	Unlimited	Unlimited Premium Wi-Fi + 10 MB Cellular	25
New subscribers	Smartphone	FREE	500 Min	Unlimited	Unlimited Premium Wi-Fi + 10 MB Cellular	25
Tribal (OK)	Smartphone	FREE	Unlimited	Unlimited	Unlimited Premium Wi-Fi + 1 GB Cellular	100

*Since 2014, all subscriptions have come with a 4G SIM card. Previously, all SIM cards were 3G capable

**Free upgrade to smartphone available after 180 days of service

Telrite’s offerings include plans with 500 MB or more of cellular data, as well as plans with unlimited access to broadband via Premium Wi-Fi through the resale of iPass’s nationwide network of over 34 million broadband access points. Non-tribal plans feature 500 minutes of voice service,⁹ unlimited text messages, and broadband data that includes both unlimited access

⁹ As a result, even if the Commission rules that Premium Wi-Fi does not qualify for the mobile BIAS minimum service standard, Telrite’s plans meet the minimum standard for voice service and therefore qualify for federal Lifeline subsidies.

to iPass’s broadband data network (and a last-mile virtual private network (VPN)) and an allotment of cellular data, depending on their device and legacy status—i.e., 500 MB of cellular data for legacy feature phone subscribers and 10 MB of cellular data for all new and smartphone subscribers.¹⁰ Tribal customers receive unlimited talk and text, and broadband data that includes both unlimited Premium Wi-Fi and 1 GB of cellular data each month. In states with enhanced state subsidies, subscribers receive plans with even more data and voice minutes. For example, in California all new subscribers receive unlimited talk and text, 100 MMS messages, and a data plan with 500 MB of cellular data and unlimited Premium Wi-Fi. Notably, all Telrite plans meet the minimum service standard for voice as well as broadband. Because the smartphones Telrite distributes are Wi-Fi enabled, customers also have unlimited access to typically free public, home and community anchor institution Wi-Fi networks. Further, because Telrite’s smartphones are hotspot capable, subscribers can connect other devices—such as tablets and laptops—to BIAS through their handset, further enhancing the value of their service. These plans demonstrate that Telrite is laser-focused on achieving the Commission’s goals of closing the digital divide¹¹ and connecting low-income Americans to jobs, education, government services, family and community.

Telrite’s broadband plans include two forms of BIAS—cellular data and Premium Wi-Fi—and meet the letter and spirit of the Lifeline Modernization Order. Telrite’s Premium Wi-Fi provides the mobility of traditional cellular BIAS (i.e., the ability to move between hotspots

¹⁰ This differentiation recognizes both the loyalty of the existing subscriber base and the fact that feature phones may not have the ability to download or utilize the iPass app. However, a legacy feature phone subscriber may upgrade to a smartphone at any time, which will enable them to use both 500 MB of cellular data and unlimited iPass each month.

¹¹ See Remarks of Chairman Ajit Pai, Federal Communications Commission (Jan. 24, 2017), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0124/DOC-343184A1.pdf.

without user interaction) and speeds that exceed the Commission's mobile (3G) minimum speed standards and are backed by fixed networks with speeds as good as or better than traditional fixed BIAS. Because it provides unlimited broadband each month, Telrite's Premium Wi-Fi service meets the Commission's 500 MB mobile BIAS minimum monthly data quantity standards.¹² Telrite's basic broadband offering for new subscribers also provides 10 MB of cellular data at no cost to the consumer, and the ability to purchase additional cellular data at competitive rates.¹³ To enhance security, Telrite's Premium Wi-Fi service transits over a last-mile VPN, which Telrite provides to its customers free of charge. In total, the basic broadband plan featuring unlimited Telrite's Premium Wi-Fi service offers consumers a \$34 value, free of charge, every month.

Telrite's handsets also meet the letter and spirit of the Lifeline Modernization Order. All new Telrite subscribers receive an Android smartphone free of charge upon enrollment, and Telrite offers subscribers who have been active for 180 days a free one-time upgrade to a smartphone. Subscribers who are not eligible for the smartphone upgrade may purchase a smartphone for as little as \$35. At this point, any subscriber with a 3G non-smartphone has had the opportunity to obtain a replacement smartphone for free. As a result, today over 70 percent of Telrite subscribers have smartphones, and that number is increasing rapidly as consumers continue to transition to smartphones. Further, since 2014, all Telrite subscribers have received at least a 4G-capable SIM card that can be used with any 3G-or-better device. Telrite's 3G-capable devices (including non-smartphones) contain a web browser and email functionality that

¹² Because it provides unlimited data, Telrite's Premium Wi-Fi offering also exceeds the Commission's 150 GB fixed BIAS minimum service standard.

¹³ Consumers can purchase additional access to cellular data at affordable rates and at increments as low as \$9.95 for 400 MB.

enables users to transmit data to and receive data from all or substantially all Internet endpoints.¹⁴

These plans and devices are made possible because the 12-month benefit port freeze has helped to curb abusive “flipping”¹⁵ and to incentivize additional investment in innovative services, such as Premium Wi-Fi. Indeed, based on TracFone’s letter¹⁶ and Telrite’s experience, the benefit port freeze appears to be working: it is spurring innovative BIAS offerings and more bang for the federal buck, providing a velocity check on abusive practices, and driving smartphone distribution among Lifeline eligible low-income consumers.

II. A SMARTPHONE IS NOT REQUIRED FOR A MOBILE BIAS PLAN QUALIFYING FOR THE 12-MONTH BENEFIT PORT FREEZE

In its letter, TracFone seeks clarification that Lifeline service provided to consumers using feature phones does not enable Lifeline subscribers to utilize BIAS, as that term is defined in the Commission’s rules.¹⁷ TracFone asserts that only a smartphone can provide access to mobile BIAS. Sprint seeks clarification on the issue of “whether service providers may classify a subscriber as a Lifeline broadband customer if the device they have provided cannot handle 3G speeds.”¹⁸ Telrite submits that no clarification is needed. The Lifeline Modernization Order is already clear: when a device is provided with a Lifeline mobile broadband service, it need not be a smartphone, but the subscriber must receive the capability to access mobile data at 3G speeds

¹⁴ Prior to 2014, Telrite distributed 3G-capable SIM cards.

¹⁵ See, e.g., *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Joint Lifeline ETC Respondents’ Opposition to Petitions for Reconsideration, 3-6 (filed July 29, 2016) (citing comments and ex parte letters referencing the 12-month benefit port freeze).

¹⁶ See TracFone Request at 1.

¹⁷ See *id.* at 3.

¹⁸ See Sprint Request at 2.

to meet the mobile broadband minimum service standard.¹⁹ For example, a consumer may receive a 3G-capable SIM card, a 3G-capable handset, a hotspot device, a tablet or a smartphone, each of which provides the capability to access BIAS. Further, Lifeline providers may claim the 12-month benefit port freeze so long as they provide a service that meets the applicable minimum service standards, irrespective of whether they provide a smartphone, a mobile hotspot or any other device.²⁰

First, it bears noting that the definition of BIAS in the Lifeline context does not dictate particular kinds of devices used to access BIAS, whether fixed or mobile.²¹ In particular, the definition of mobile BIAS does not include a smartphone requirement. BIAS is a “mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service.”²² Further, while mobile BIAS “serves end users primarily using mobile stations,” the definition of “mobile station” is broad, encompassing any “radio-communication station capable of being moved and which ordinarily does move.”²³ This definition is not limited to smartphones; indeed, the Commission in the 2015 Open Internet Order notes that mobile BIAS “*also includes* services that use smartphones or mobile-network-enabled tablets as the primary

¹⁹ See 47 C.F.R. § 54.408(b)(2)(i); Lifeline Modernization Order ¶ 96.

²⁰ The Commission’s rules do not require carriers to provide a device to Lifeline subscribers; like other, non-low-income subscribers, they may bring their own.

²¹ 47 C.F.R. § 54.400(1).

²² *Id.*

²³ See 47 C.F.R. § 8.2(e); *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24, ¶ 188, n. 460 (rel. Mar. 12, 2015) (2015 Open Internet Order).

endpoints for connection to the Internet, as well as mobile satellite broadband services.”²⁴ These passages demonstrate that the Commission did not intend to limit mobile BIAS to services provisioned in connection with a smartphone, but rather that mobile BIAS may be accessed through a number of means, including but not limited to smartphones and tablets.

Second, the Lifeline Modernization Order does not require Lifeline providers to provide a smartphone in order to receive a subsidy or qualify for the 12-month benefit port freeze. Not only did the Lifeline Modernization Order reject calls to subsidize handsets,²⁵ neither the rules nor the Lifeline Modernization Order require the provision of a handset at all, let alone a smartphone. Instead, the rules only require that in order to receive Lifeline reimbursement, an ETC must meet the applicable minimum service standards, and that on a going forward basis, if a provider provides a device to the customer, it must be Wi-Fi enabled.²⁶ This approach is reasonable. If the mobile BIAS Lifeline rules required ETCs to provide a smartphone in order to meet the mobile BIAS minimum service standards, then the fixed BIAS Lifeline rules would similarly implicitly require providers to provide eligible consumers with a laptop computer, desktop computer, or smartphone to meet the fixed BIAS minimum service standards. Neither the rules nor the Lifeline Modernization Order support such an implicit reading.

Third, focusing on the particular handset ignores technical and practical realities. Specifically, on GSM networks, like the network over which Telrite provides cellular data, the operative piece of equipment is the user’s SIM card, which is tied to the user’s account and enables voice and broadband service. The SIM card is the only piece of equipment required in

²⁴ See *id.* (emphasis added).

²⁵ See Lifeline Modernization Order ¶ 125.

²⁶ See *id.* ¶ 376; 47 C.F.R. § 54.408(f)(1).

order for the user to establish an account. With respect to the handset, the subscriber has a choice at enrollment: obtain a handset from the provider, purchase a compatible handset from Telrite or a third-party, or use a previously purchased compatible handset (“bring your own device”—BYOD). Subscribers may change their handset at any time, connecting a smartphone on one day and popping the SIM card into a 3G-capable feature phone device on the next, without the provider’s knowledge or permission. This is a good thing. It promotes consumer choice and handset innovation, and enables subscribers to use the device with which they are most comfortable. For some users, their device of choice may be a smartphone, while for others—particularly the elderly—their device of choice may be a 3G-capable non-smartphone. All along, however, the SIM card remains the same, and establishes the upper-bound of the service plan’s BIAS capability. In Telrite’s case, since 2014 it has been providing consumers with 4G-capable SIM cards, and before then all of its SIM cards were 3G-capable. Consequently, all Telrite subscribers have the capability to access BIAS with 3G or better speeds. As such, if the Commission decides to establish an implicit equipment requirement—which Telrite submits is unnecessary—it should judge compliance with the rules in the GSM context based on the capabilities of the underlying SIM card, which the provider controls, rather than the device connected to the SIM card, which the provider may not control.

Fourth, 3G-capable feature phones, including those that Telrite previously provided to its subscribers and that some subscribers continue to use, can and do provide access to BIAS. Telrite’s 3G-capable feature phone devices provide users with on-device browsers that enable users to transmit data to and receive data from all or substantially all Internet endpoints in a manner that meets the definition of BIAS under 47 C.F.R. § 54.400(l). In Telrite’s case, its 3G feature phone handsets provide the capability of broadband access at 3G or better speeds and

have built-in web browsers, and many have full QWERTY keyboards and can download specialized social media applications (e.g., Twitter). As such, it is false to say that Lifeline subscribers with feature phones “are not able” to transmit data to and receive data from all or substantially all Internet endpoints.

While it is clear that the Lifeline Modernization Order did not condition application of the 12-month benefit port freeze for BIAS plans on distribution of a smartphone, Telrite acknowledges that the distribution of smartphones and investment in innovative service plans was a primary justification for extending the port freeze requirement to broadband.²⁷ As explained in section I above, Telrite is offering smartphones to all new customers, as well as to existing customers. It is offering plans that meet or exceed the minimum service standards for BIAS. In short, Telrite not only has met the letter and spirit of the new regulatory requirements, it has gone above and beyond to ensure that Lifeline-eligible consumers have access to innovative plans, services and devices that include plans that offer more broadband than a monthly tranche of 500 MB of cellular data.

Although the Lifeline Modernization Order requires no clarification on whether a smartphone is a prerequisite for access to mobile BIAS (it is not), if the Commission determines a declaration is necessary, it should declare that if a provider offers a device with its Lifeline-supported broadband service, the provider need not provide consumers with a smartphone in order to seek reimbursement or avail itself of the 12-month benefit port freeze, so long as the underlying service and device enables access to BIAS at 3G or better speeds (e.g., through a 3G-capable SIM card, a 3G-capable handset, a hotspot device, a tablet or a smartphone). TracFone’s

²⁷ See *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42 et al., Comments of the Lifeline Joint Commenters on the Second Further Notice of Proposed Rulemaking to Modernize and Restructure the Lifeline Program, 17 (Aug. 31, 2015).

request for clarification is really a request for a new rule that is neither found in the Lifeline Modernization Order nor subject to a petition for reconsideration. As such, the Commission should reject TracFone's request for clarification.

III. TELRITE PROVIDES ITS LIFELINE SUBSCRIBERS WITH A VARIETY OF PRODUCTS THAT MEET OR EXCEED THE LIFELINE MODERNIZATION ORDER'S MINIMUM SERVICE STANDARDS AND QUALIFY FOR THE 12-MONTH BENEFIT PORT FREEZE

Contrary to Sprint's and TracFone's claims,²⁸ Telrite's Premium Wi-Fi service is BIAS that qualifies for the 12-month benefit port freeze. Moreover, Telrite's broadband offerings advance the Commission's goals of consumer choice and innovation by providing an alternative to traditional cellular data service through secure, nationwide connectivity using unlicensed spectrum.

A. Telrite's Offerings Meet the Commission's Lifeline Minimum Service Standards

In their respective letters, TracFone and Sprint submit that Wi-Fi does not meet the Lifeline broadband minimum service standard, and seek clarification from the Commission.²⁹ Specifically, TracFone asks the Commission to clarify that "broadband access through Wi-Fi does not meet the 500 MB minimum standard" and Sprint asks "the FCC to clarify whether a Lifeline ETC that offers less than 500 MB of primary (non-Wi-Fi) data is or is not meeting the minimum service standard," arguing that "Wi-Fi access in any form does not count toward meeting the minimum mobile broadband service requirement."³⁰ In subsequent letters, TracFone

²⁸ See TracFone Request and Sprint Request.

²⁹ See Sprint WCB Letter at 2. In the Lifeline Modernization Order, the Commission includes BIAS as a supported service. See Lifeline Modernization Order ¶ 39.

³⁰ See TracFone Request at 3; Sprint WCB Letter at 2.

takes its advocacy one step further, arguing that “3G is not BIAS” and that “Internet access provided by others” does not count as broadband (a de facto facilities-based requirement which TracFone cannot meet),³¹ curiously echoing Sprint’s argument that wireless ETCs must provide service over their “own cellular data network” (which TracFone does not have) to qualify for the 12-month benefit port freeze.³²

Telrite respectfully submits that its provision of broadband via Premium Wi-Fi indeed qualifies as BIAS. However, for the purposes of ensuring a level-playing field and encouraging an innovative and technology neutral Lifeline program, Telrite also submits that the Commission should declare that its Premium-Wi-Fi service meets the definition of mobile BIAS and may be used to meet the broadband minimum service standards.³³

1. Telrite’s Premium Wi-Fi Service Is BIAS

As a threshold matter, Telrite’s Premium-Wi-Fi service is BIAS. The Commission defines BIAS, for purposes of Lifeline, as “[a] mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service.”³⁴ Telrite’s Premium Wi-Fi service is a mass-market retail service that enables a consumer to access a network of BIAS connections—including but not limited to those of cable broadband providers—over Wi-Fi

³¹ See TracFone WCB/TAPD Letter, Enclosure at 1.

³² See Sprint WCB Letter at 1.

³³ As described above, the broadband Premium Wi-Fi Telrite resells and incorporates into its Lifeline service offerings is distinguishable from free public Wi-Fi. The service has a market value of \$25 and it provides access through a secure VPN connection (an additional \$9 value) to a vast nationwide network of Wi-Fi broadband access points, similar to the manner in which cellular data service provides secure access to a nationwide network of cellular access points.

³⁴ See 47 C.F.R. 54.400(l).

through an application on the user’s smartphone. Unlike services that merely aggregate open Wi-Fi networks, Telrite’s Premium Wi-Fi service relies on negotiated arrangements between the underlying Premium Wi-Fi provider and the underlying broadband providers. As stated above, Telrite resells the network of iPass, which currently provides access to over 34 million broadband access points throughout the United States, and more globally, providing a dense network that users can access at home or on the go. Telrite’s Premium Wi-Fi service also includes several features that distinguish it from traditional public Wi-Fi networks. These services include a secure connection through a last-mile VPN; a seamless experience that enables automatic connection to the strongest broadband signal in the area; and an app with speed test and hotspot finder functionality. In this way, Telrite’s Premium Wi-Fi service provides an experience with mobility like cellular BIAS and speeds that meet or exceed those of fixed BIAS.³⁵

2. Telrite’s Premium Wi-Fi Service Is Mobile BIAS, Which Is Not Limited to Licensed, Cellular Data

Telrite’s Premium Wi-Fi service also meets the definition of mobile BIAS. While the Lifeline Modernization Order does not define mobile BIAS, in the Open Internet context, the Commission defined mobile BIAS as BIAS “that serves end users primarily using mobile stations.” Under the Commission’s rules, a mobile station is “a station in the mobile service intended to be used while in motion or during halts at unspecified points” (as opposed to a “land

³⁵ If the Commission determines that Telrite’s Premium Wi-Fi service is not mobile BIAS, the service may still be considered fixed BIAS. Specifically, while Premium Wi-Fi uses smartphones and mobile-network-enabled tablets as the primary endpoints for connection to the Internet, meeting the definition of mobile BIAS, it also enables connectivity in a manner similar to fixed BIAS connections.

station,” which is not intended to be used while in motion).³⁶ The “mobile service” is “[a] radiocommunication service between mobile and land stations, or between mobile stations.”³⁷

Importantly, there is no support in the Lifeline Modernization Order or the Commission’s rules for TracFone and Sprint’s contention that mobile BIAS is limited to licensed, cellular data connections. First, the definition of mobile BIAS, by its terms, is not limited to cellular BIAS. Indeed, the Commission has noted that mobile BIAS “*also includes* services” such as mobile satellite services “that use smartphones or mobile-network-enabled tablets as the primary endpoints for connection to the Internet.”³⁸ Telrite’s Premium Wi-Fi service also meets this description.

Second, the Lifeline Modernization Order does not limit mobile BIAS to licensed, cellular data. Instead, the Commission expressly calls for providers to offer innovative broadband solutions to help close the digital divide.³⁹ Such an expansive definition of mobile BIAS makes sense. The mobile industry is fast-moving and innovative, and is increasingly looking to unlicensed (Wi-Fi, LTE-U) and hybrid licensed-unlicensed services (Wi-Fi First, 5G) to meet the skyrocketing demand of consumers.⁴⁰ Indeed, as GSMA has explained, one of the leading visions for 5G mobile data “would create a blend of pre-existing technologies covering

³⁶ A “station” is “[o]ne or more transmitters or receivers or a combination of transmitters and receivers, including the accessory equipment, necessary at one location for carrying on a radiocommunication service.” 47 C.F.R. § 2.1(c). A radiocommunication service is “[a] service . . . involving the transmission, emission and/or reception of radio waves for specific telecommunication purposes.” *Id.*

³⁷ *Id.*

³⁸ See 2015 Open Internet Order ¶ 188 (emphasis added).

³⁹ See Lifeline Modernization Order ¶ 373.

⁴⁰ See, e.g., Dave Fraser, “Hybrid Wi-Fi-Cellular Service Is the Future” (July 26, 2016), available at <http://www.multichannel.com/blog/mcn-guest-blog/hybrid-wifi-cellular-service-future/406645> (“Well executed hybrids are the future of the industry.”).

2G, 3G, 4G, Wi-fi and others to allow higher coverage and availability, and higher network density in terms of cells and devices.”⁴¹ If the Commission were to limit support for mobile BIAS to licensed or cellular data connections, it would effectively foreclose those innovative and popular service offerings that it expressly seeks to promote.

Here, Telrite’s Premium Wi-Fi service meets the definition of mobile BIAS because it is BIAS that serves end users using smartphones in the mobile service that are intended to be used while in motion or “during halts at unspecified points” through automatic connections between a nationwide network of hotspots.⁴² Unlike fixed services, Telrite’s Premium Wi-Fi service relies on a network of access points and enables the subscriber to travel between those connections using a mobile device. Therefore, Telrite’s Premium Wi-Fi service is mobile BIAS for purposes of the Lifeline rules that counts toward the minimum service standards and justifies applying the 12-month benefit port freeze.

3. Telrite’s Premium W-Fi Service Meets the Commission’s Minimum Service Standards

In addition to meeting the definition of mobile BIAS, Telrite’s Premium Wi-Fi service meets the applicable mobile broadband minimum service standards. As such, it qualifies for the 12-month benefit port freeze.

To meet the minimum service standards, mobile BIAS must advertise “3G or higher” speed service.⁴³ Specifically, the rule states that the “minimum service standard for mobile

⁴¹ See GSMA Intelligence, *Understanding 5G: Perspectives on future technological advancements in mobile*, at 6 (Dec. 2014).

⁴² Alternatively, Telrite’s entire broadband offering should be considered as a single offering (Premium Wi-Fi and cellular data). Where there are gaps in Premium Wi-Fi service, the service automatically falls back to cellular data, providing seamless coverage while on the go that meets the definition of mobile BIAS.

⁴³ See Lifeline Modernization Order ¶¶ 96, 105.

broadband speed will be 3G.”⁴⁴ The Lifeline Modernization Order explains that the mobile BIAS minimum speed standard is “based on technology generation” and requires a service “advertising at least 3G mobile technology,” citing the Mobility Fund as a reference point.⁴⁵ Contrary to TracFone’s and Sprint’s claims, the minimum speed standard is not meant to require a specific cellular or “primary” broadband delivery technology, but rather to serve as a proxy for the speed of service.

First, the minimum service standard itself is described as a speed standard, not a technology standard. The rule itself states that the “minimum service standard for mobile broadband *speed* will be 3G.” While the rule could have prescribed a minimum “network technology” standard or “infrastructure” standard, as it did in the Mobility Fund context,⁴⁶ it did not do so here. To be sure, the Order states that the rule is “based on technology generation” and requires a service “advertising at least 3G mobile technology,” but basing a speed standard on a particular technology and requiring the particular technology are different things, and there is no indication in the Order that the Commission intended to impose a technology requirement.⁴⁷

In other contexts, the Commission has separately defined 3G network infrastructure and 3G speeds. Specifically, in the 2011 USF/ICC Transformation Order, which established the Mobility Fund, the Commission required fund recipients to deploy 3G or better networks, but

⁴⁴ See 47 C.F.R. § 54.408(b)(2)(i) (emphasis added).

⁴⁵ See Lifeline Modernization Order ¶ 96.

⁴⁶ See *Connect America Fund, et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, ¶ 361-62 (rel. Nov. 18, 2011)(2011 USF/ICC Transformation Order) (requiring fund recipients to deploy a “3G or better network,” and separately establishing speed requirements for such networks).

⁴⁷ To the extent that the Commission describes “mobile technology generation” using the phrase “i.e., 3G, 4G,” that phrase is best understood as non-exclusive, otherwise it could be read to exclude variants of 4G (e.g., 4G/LTE, LTE-A), 5G, mobile satellite services, and other mobile BIAS technologies. See Lifeline Modernization Order ¶ 92.

only provided support to 3G networks that “me[t] or exceed[ed] an outdoor minimum of 200 kbps downstream and 50 kbps upstream to handheld mobile devices.”⁴⁸ As such, a requirement of 3G networks is conceptually different from requiring 3G speeds. Here, where the Commission’s Lifeline rules require speeds of “3G or higher,” it similarly uses the term as a proxy for speeds capable on 3G networks, not 3G cellular infrastructure.

Second, even if the Commission did intend to establish a “mobile technology” standard, the Order does not limit mobile technology to licensed, cellular technologies. The omission of a specific cellular requirement in the Lifeline Modernization Order contrasts with the Mobility Fund, where the Commission required funding recipients to hold spectrum and deploy 3G cellular networks.⁴⁹ The Lifeline Modernization Order contains no spectrum or cellular requirement, and cannot reasonably be read to impose one. Indeed, if the Commission were to require 3G cellular networks in the Lifeline context, it would effectively prohibit mobile satellite services from qualifying for Lifeline support, despite the fact that the Commission has recognized such satellite services as mobile BIAS and the fact that in remote areas lacking cellular coverage those services may be the only option for consumers.

Third, even if the Commission did intend to require a minimum standard of 3G cellular technology, the fact that the Commission established a standard of “at least” 3G “or better” indicates that faster technologies, such as Premium Wi-Fi, could meet the standard. In the case of Telrite’s Premium Wi-Fi service, a nationwide network of millions of Wi-Fi hotspots (and growing) represents a faster and more advanced technological approach to mobile connectivity than 3G cellular technologies. As such, as a matter of technology generations, Telrite’s Premium

⁴⁸ *See id.*

⁴⁹ *See id.* ¶ 362.

Wi-Fi service meets the definition of “3G or better” service because the speed offered makes it “better.”

Fourth, contrary to Sprint’s assertions, no support can be found in the Lifeline Modernization Order or the new Lifeline rules that broadband data must be carried over the “ETC’s own cellular network” to qualify for reimbursement. Indeed, the Commission has long permitted carriers to receive broadband support through the resale of another carrier’s network, and it does not disturb this finding in the Lifeline Modernization Order.⁵⁰ Moreover, the Lifeline Modernization Order actively encourages providers to offer “new, innovative products and services” that “push the envelope in search of better ways to delivery broadband to . . . subscribers.”⁵¹ For that reason, any BIAS offering is eligible for monthly Lifeline reimbursement so long as the provider meets the Commission’s speed and quantity minimum service standards.

Here, Telrite’s broadband plans featuring unlimited broadband via Premium Wi-Fi comply with the applicable broadband quantity minimum service standards. Telrite provides⁵² consumers with *unlimited* Premium Wi-Fi each month at no cost, far exceeding the Commission’s 500 MB mobile minimum service standard and the 150 GB fixed broadband minimum service standard. Further, when subscribers use Premium Wi-Fi, they achieve speeds that exceed the mobile BIAS minimum service standards and include performance characteristics that meet or exceed traditional fixed BIAS speeds. Because this offering meets the

⁵⁰ See Lifeline Modernization Order ¶¶ 45, 242 (citations omitted).

⁵¹ See *id.* ¶ 373.

⁵² Importantly, when Telrite resells Premium Wi-Fi to its subscribers, and those subscribers use the service to access the Internet, Telrite is properly considered the “provider” of the Premium Wi-Fi service, in a manner similar to the relationship between a mobile virtual network operator (MVNO) and its underlying mobile network operator (MNO).

Commission’s minimum service standards, it is clear that the service qualifies for the 12-month benefit port freeze. For these reasons, the Commission should declare that Telrite’s Premium Wi-Fi is BIAS that meets the applicable minimum service standards and qualifies for the 12-month benefit port freeze.

B. Telrite’s Broadband Offering Promotes the Lifeline Modernization Order’s Goals of Promoting Consumer Choice and Innovation

Telrite’s broadband offering also advances core public policy goals of the Lifeline Modernization Order, including consumer choice and innovation.

First, Telrite’s broadband offering—including Premium Wi-Fi—promotes consumer choice. Telrite’s broadband service offers consumers both cellular data and an unlimited amount of data on Premium Wi-Fi network connections that are typically faster than traditional 3G cellular data service. For Lifeline subscribers who chose a service provider based on the data component of a bundled service offering, they can in many markets now choose between Telrite’s Premium Wi-Fi service, a unique service with unlimited data and faster speeds, but with more limited coverage, and other ETCs’ more limited and slower 500 MB 3G cellular service offerings that offer more geographically widespread availability. The Commission itself recognized the value of “empower[ing] consumers” to evaluate the various trade-offs and to choose a service that best meets their needs.⁵³ While the Commission there was discussing the choice between fixed and mobile, the same argument applies to choices among fixed and mobile BIAS offerings. Here, non-Lifeline subscribers may choose Wi-Fi-enabled mobile broadband

⁵³ See Lifeline Modernization Order ¶ 50 (“We allow Lifeline subscribers to apply the discount to fixed or mobile standalone broadband offerings. We empower consumers to make this choice. While fixed and mobile broadband services both provide access to online services, there are some key tradeoffs consumers must consider regarding the utility of each service. We recognize these tradeoffs both in terms of technological constraints and how each mode is offered in the market.”).

service and other innovative service offerings from cable companies and others, or they may choose more familiar all-cellular offerings. Lifeline-eligible subscribers should be able to make similar choices based on the plans that are the most affordable and best serve their needs.

Second, Telrite's broadband service promotes the Commission's pro-innovation agenda for Lifeline modernization. The Lifeline Modernization Order expressly calls for innovation in service offerings and in no way limits the definition of mobile BIAS to mobile data services provided over a provider's own cellular data network. The future of mobile technology will rely on a combination of licensed and unlicensed technologies, just as Telrite' offers its customers a data offering with both unlimited Premium Wi-Fi and cellular broadband data. A number of mobile providers today offer such hybrid broadband services (e.g., Google Fi and Republic Wireless), and fixed broadband providers are providing their consumers with enhanced mobility through Wi-Fi-powered networks (e.g., Cable Wi-Fi).⁵⁴ Limiting supported broadband services to cellular broadband at this time would be extremely shortsighted, imposing a chilling effect on the industry. Indeed, as hybrid and Wi-Fi first offerings become more prevalent, the inability of low-income Americans to apply Lifeline support to offerings like Telrite's Premium Wi-Fi would further exacerbate the digital divide.

CONCLUSION

Ultimately, this proceeding demonstrates that the Lifeline Modernization Order and the 12-month benefit port freeze are working. The Commission adopted the 12-month benefit port freeze in order to incentivize more stable customer-carrier relationships, to tamp down on wasteful and abusive flipping practices and to promote the deployment of smartphones. As a

⁵⁴ See Craig Leddy, *Taking Flight: Cable's New Routes to Wireless Mobility*, Heavy Reading, http://www.heavyreading.com/details.asp?sku_id=3453&skuitem_itemid=1686.

result of the benefit port freeze, Telrite has been able to provide all new subscribers with a smartphone, and to offer a free upgrade for existing customers to a smartphone after 180 days of service. Today, 71 percent of Telrite subscribers have a smartphone, and that number has been increasing. Further, the 12-month benefit port freeze enables Telrite to offer all subscribers a broadband service with both Premium Wi-Fi and cellular data that meets or exceeds the Commission's minimum service standards. Consumers who are dissatisfied with Telrite's broadband offering always have the option to switch to a voice-only plan, avail themselves of the 60-day benefit port freeze, and switch to a new carrier that better meets their needs.

Further, the fact that TracFone has witnessed a decrease in port-ins from other carriers shows that the 12-month benefit port freeze is an effective velocity check on benefit ports, meaning that carriers like Telrite who provide customers with free smartphones and innovative broadband plans will not become the subject of phone flipping and other pernicious practices that would otherwise render such offerings uneconomical. To foreclose Telrite's innovative service offerings through a petition for rulemaking masked as a request for clarification ironically would undermine the very effects that that Lifeline Modernization Order intended to have, turning back the clock on Lifeline and exacerbating the digital divide.

For these reasons, the Commission should reject TracFone's and Sprint's requests for clarification and instead make findings consistent with these comments.

By:



John J. Heitmann
Jameson J. Dempsey
KELLEY DRYE & WARREN LLP
3050 K Street, NW
Suite 400
Washington, D.C. 20007
(202) 342-8544 (voice)
(202) 342-8451 (facsimile)
jheitmann@kelleydrye.com

Counsel for Telrite Corporation d/b/a Life Wireless

March 2, 2017